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IN THE

Supreme Court of the United States

October Term, 1970

No. 586

COMMONWEALTH OF PENNSYLVANIA,

Petitioner

v.

CHARLES E. WHITING, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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INDEX

	Page
Citations to Opinions Below	1
Jurisdiction	2
Constitutional Question Involved	2
Statement of Facts	2
Reasons for the Allowance of the Writ	3
Opinion of The Supreme Court of Pennsylvania	5
Opinion of the Superior Court of Pennsylvania	10
Opinion of the Criminal Court of Montgomery County Pennsylvania	11
Order of the Criminal Court of Montgomery County Pennsylvania	18

TABLE OF CITATIONS

Cases:

Commonwealth v. Bumpus, 238 N.E. 2d 348 (Mass. 1968)	4
People v. Ayala, 233 N.E. 2d 80 (Ill. App. 1967)	4
Rigney v. Hendrick, 355 F.2d 710 (3rd Cir. 1965)	4
Simmons v. United States, 390 U.S. 377 (1968)	4
United States v. D'Argento, 373 F.2d 307 (7th Cir. 1967)	4
United States v. Quarles, 387 F.2d 551 (4th Cir. 1967)	4
United States v. Zeiler, F.2d (3rd Cir. 1970)	4
Wright v. United States, 2 Crim. L. Rptr. 2393 (1967)	3

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Petitioner, Milton O. Moss, Esquire, the District Attorney of Montgomery County, Pennsylvania, prays that a Writ of Certiorari be issued to review the judgment (5-2) of the Supreme Court of Pennsylvania entered in the above-entitled cause on July 2, 1970.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania is presently unreported. It appears herein as Appendix along with the per curiam order of the Superior Court of Pennsylvania.

The trial court's opinion also appears herein as Appendix.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania reversing the order of the Superior Court of Pennsylvania and vacating the judgment and sentence of the Court of Common Pleas of Montgomery County, Pennsylvania and remanding the case for further proceedings was entered on July 2, 1970.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

CONSTITUTIONAL QUESTION INVOLVED

Whether counsel is required during a one-on-one identification of the defendant and during photographic identification of the defendant prior to indictment and prior to the appointment of counsel?

STATEMENT OF FACTS

On November 9, 1967, the defendant approached the victim in a shopping center and, after physically abusing her, took her purse and ran to his nearby automobile. Approximately three-quarters-of-an-hour following the incident, the defendant voluntarily entered at the Lower Merion Township police headquarters and without solicitation confessed to the aforementioned crime.

Three-quarters-of-an-hour following the voluntary appearance of the defendant, the investigating police showed the victim a series of eight photographs including one of the defendant pictured with eyeglasses. She identified the defendant as her assailant. The victim was then shown a second series of photographs including one of the defendant pictured without eyeglasses. Again, she identified the defendant as her assailant. At the time of this identification, the victim was unaware of the defendant's earlier appearance at police headquarters and his subsequent arrest. Nothing was said to the victim to aid or abet her identification.

The following day, the victim was again brought to police headquarters to make an in-person identification. She viewed the defendant through a one-way mirror and thereupon identified him as her assailant. On April 5, 1968, the victim made an in-court identification of the defendant as her assailant, and the defendant was subsequently found guilty on April 9, 1968 of robbery, aggravated robbery and assault and battery.

The trial judge on page six of his opinion, found that the victim's "in-court identification was not tainted by the identification of November 10, 1967 and that it was reasonable under the circumstances."

On October 4, 1968, the defendant's motions for a new trial and in arrest of judgment were dismissed. The defendant appealed to the Superior Court of Pennsylvania which affirmed the lower court per curiam on August 7, 1969.

The defendant petitioned for an allowance of an appeal to the Supreme Court of Pennsylvania and said petition was granted on October 17, 1969, and thereafter the Supreme Court of Pennsylvania on July 2, 1970 reversed the order of the Superior Court and vacated the judgment of the sentence of the Court of Common Pleas, Criminal Division of Montgomery County, Pennsylvania, and remanded the case for further proceedings.

REASONS FOR THE ALLOWANCE OF THE WRIT

The reversal of the present Order of the Superior Court of Pennsylvania by the Supreme Court of Pennsylvania brings forth the conflict in the state of the law in regard to whether counsel is required at preindictment identification procedures such as one-on-one identification and photographic identifications where no counsel has been appointed.

There is a conflict amongst the states in regard to the above question. See *Commonwealth v. Bumpus*, 238 N.E. 2d 343, 347, (Mass.) (1968); *Wright v. United States*,

2 Crim. L. Rptr. 2393 (1968); *People v. Ayala*, 233 N.E. 2d 80, 81 (Ill. App. 1967).

There is a conflict amongst the various Circuit Courts of Appeals in the United States in regard to the above question: *United States v. D'Argento*, 373 F.2d 307 (7th Cir. 1967); *United States v. Quarles*, 387 F.2d 551 (4th Cir. 1967); *Rigney v. Hendrick*, 355 F.2d 710, 712 (3rd Cir. 1965); *United States v. Zeiler*, —— F.2d —— (3rd Cir. 1970).

There is no constitutional requirement that an identification procedure requires the presence of counsel when it occurs before indictment and before appointment of counsel.

Since the trial judge found as a fact that Mrs. Donnelly's (the victim) in-court identification was not tainted by the identification of November 10, 1967, and that it was reasonable under the circumstances, the Supreme Court of Pennsylvania should not have reversed and remanded the matter for a determination which has already been made by the trial court: *Simmons v. United States*, 390 U.S. 377 (1968).

WHEREFORE, Milton O. Moss, Esquire, District Attorney of Montgomery County for the foregoing reasons requests this Honorable Court grant the Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania.

Respectfully submitted,

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OPINION OF THE SUPREME COURT OF PENNSYLVANIA

ROBERTS, J. FILED: July 2, 1970

On April 9, 1968, appellant was found guilty by a jury of robbery, aggravated robbery, and assault and battery, all arising out of a purse snatching. Following the denial of post-trial motions he was sentenced to serve from four to twelve years. He thereupon appealed to the Superior Court, which affirmed the judgment of sentence per curiam without opinion. We granted allocatur.

On November 9, 1967, appellant was arrested for the purse snatching in question. Approximately one hour *after* his arrest, the victim was shown eight photographs, one of which was the appellant without eyeglasses. After the victim identified appellant as her assailant, she was then shown another picture of appellant, this time with eyeglasses (her assailant wore eyeglasses). She again identified appellant as her assailant. The next day Detective McNabb of the Lower Merion Police Department telephoned her, requesting that she come to the police station to view a suspect. When she arrived she was shown the appellant behind a one-way mirror being questioned by Detective McNabb, whom the victim knew. Concerning these pretrial confrontations, the victim testified at trial: "Well, I said the photograph looked like the person. The next day, I said that it positively was the suspect I saw." The victim also testified that at the time her purse was snatched, she observed her assailant for approximately three to six seconds.

In *United States v. Wade*, 388 U.S. 218, 229-30, 87 S. Ct. 1926, 1933-34 (1967),[1] the Supreme Court of the United States detailed the reasons for holding that certain pretrial confrontations are critical stages which require that the accused have counsel present:

[1] Since the pretrial identifications which occurred in the instant case took place after June 18, 1967, the holding in *Wade* is applicable. *Stovall v. Denno*, 388 U.S. 293, 296, 87 S. Ct. 1967, 1969 (1967).

> "The pretrial confrontation for purpose of identification may take the form of a lineup . . . or presentation of the suspect alone to the witness, as in Stovall v. Denno, supra [388 U.S. 293, 87 S. Ct. 1967 (1967)]. It is obvious that risks of suggestion attend *either form of confrontation* and increase the dangers inhering in eyewitnesses identification. But as is the case with secret interrogations, there is serious difficulty in depicting what transpires at lineups *and other forms of identification confrontations*." (Emphasis added; footnote omitted.)

Additionally, the Court pointed out in *Wade* that counsel was necessary to overcome the "potential for improper influence" inherent in certain pretrial identification procedures:

> "[T]he vice of suggestion created by the [one-on-one] identification in *Stovall*, supra, was the presentation to the witness of the suspect alone handcuffed to police officers. It is hard to imagine a situation more clearly conveying the suggestion to the witness that the one presented is believed guilty by the police." *Wade*, 388 U.S. at 233, 87 S. Ct. at 1936.

In the instant case there were two pretrial confrontations which occurred after the suspect was in custody: a one-on-one identification through a one-way mirror, and a photographic identification. It is clear that under *Wade*, both confrontations were critical stages requiring counsel. The necessity for counsel at a one-on-one identification was specifically noted in the passages quoted above from *Wade*.[2] Indeed, appellant's inability to depict what

[2] Accord *Commonwealth v. Guillory*, —— Mass. ——, 254 N.E. 2d 427 (1970); *Rivers v. United States*, 400 F.2d 935 (5th Cir. 1968); see *People v. Fowler*, 1 Cal.3d 335, 344, 82 Cal. Rptr. 363, 370, 461 P.2d 643, 650 (1969) ("The high court, in holding [in *Stovall*] that the *Wade-Gilbert* rules were to have purely prospective application . . . strongly inferred that such rules would have governed the factual situation at bench if they

transpired at the one-on-one man identification is readily apparent in the instant case, for appellant did not even know of the identification until the victim testified at trial. As for the photographic lineup employed in the instant case, the necessity for counsel at that confrontation is implicit in *Wade*, which factually concerned a corporeal lineup. *Wade* cannot be undercut simply by substituting pictures for people, nor can the police prepare a witness for the lineup by privately showing the witness pictures of the accused. As the Third Circuit recently held in *United States v. Zeiler*, ___ F. 2d ___ (3rd Cir., June 5, 1970):

> "The considerations that led the court in *Wade* to guarantee the right of counsel at lineups apply equally to photographic identifications conducted after the defendant is in custody. The dangers of suggestion inherent in a corporeal lineup identification are certainly as prevalent in a photographic identification. . . . Also the defendant himself not being present at such a photographic identification is even less able to reconstruct at trial what took place unless counsel was present. . . . In addition, the constitutional safeguards that *Wade* guaranteed for lineups may be completely nullified if the police are able privately to confront witnesses prior to the lineup with suggestive photographs." (Citations omitted.)[3]

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had been given retroactive application . . ."). See also *Wade*, 388 U.S. at 251, 87 S. Ct. at 1944 (White, Harlan, and Stewart, JJ., dissenting in part and concurring in part): "The rule [announced by the majority in *Wade*] applies . . . *a fortiori* to a face-to-face encounter between the witness and the suspect alone."

[3] We note that the record in the instant case indicates that the pictures of appellant shown to the victim may have been police mug shots. There is no indication whether the other photographs were also mug shots.

Since appellant's right to counsel at the pretrial identifications was violated, the victim should not have been permitted to make her in-court identification, absent a showing that the identification had an "independent origin." See *Wade*, 388 U.S. at 242, 87 S. Ct. at 1940. The Commonwealth urges, however, that appellant failed to object to the admission of the victim's identification, and hence waived his right to relief on this issue. We cannot agree.

After the victim testified at trial, another witness testified and court was adjourned for the weekend. On Monday, before the trial recommenced, the following transpired:

> "MR. LOVENWIRTH [Defense Counsel]: Your Honor, the Defendant has requested to see Your Honor at side bar personally where he wishes to make a motion.
>
> "THE COURT: What kind of motion?
>
> "MR. LOVENWIRTH: Your Honor, he advises me that he wishes personally to make a motion, not through counsel, but personally make a motion that the Jury be instructed to disregard the identification made by Mrs. Mary Donnelly [the victim] as it is thought that such identification is violent to either the rules of evidence or the rules of due process. I'm not sure just what reason he will give the Court for that purpose. Now it's very possible that my client has good legal grounds. I cannot frankly advise the Court that I am familiar with it, however.
>
> "THE COURT: Well, you may tell him that we are not going to depart from the usual and customary procedures in this court. He has able and competent counsel and the counsel is certainly competent to voice any objections that the defense may have to any evidence that has been introduced. . . . You can tell him that his request is denied, and we will move along with the next Commonwealth witness. *An exception to the defense.*" (Emphasis added.)

It is quite clear from the above colloquy that appellant has not waived his right to litigate the propriety of the victim's identification. We do require that issues be called to the trial court's attention so that errors may be corrected while the trial is in progress. That requirement, however, was certainly met in the instant case, and the trial judge even noted an objection for appellant. Hence we cannot find a waiver. See, e.g., *Commonwealth ex rel. Fox v. Maroney*, 417 Pa. 308, 313 n.5, 207 A. 2d 810, 813 n.5 (1965) (citing facts of several cases where we have held no waiver).

While appellant must be accorded a new trial, the victim's identification may still be admissible if it had an "independent origin," see supra. We think it only fair, therefore, to give the Commonwealth, if it so desires, a chance to show such origin before the new trial takes place. If the Commonwealth can show such independent origin, the victim may so testify, without, of course, referring to the improper identifications which occurred. *Gilbert v. California*, 388 U.S. 263, 272-73, 87 S. Ct. 1951, 1956-57 (1967). If the Commonwealth cannot show an independent origin, the victim cannot give her in-court identification.

The order of the Superior Court is reversed, the judgment of sentence of the Court of Common Pleas, Criminal Section of Montgomery County is vacated, and the case is remanded for further proceedings consistent with this opinion.

Mr. Justice Pomeroy concurs in the result.

Mr. Chief Justice Bell and Mr. Justice Jones dissent.

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[1] In light of our decision that appellant must be given a new trial, we need not pass on appellant's claims that the evidence was insufficient to sustain the verdict, that an improperly obtained confession was admitted at trial, that a motion for a change of venue should have been granted, and that a police officer improperly testified concerning his prior knowledge of appellant.

OPINION OF THE SUPERIOR COURT OF PENNSYLVANIA

PER CURIAM FILED: August 7, 1969

Judgment of sentence affirmed.

OPINION OF THE CRIMINAL COURTS OF MONTGOMERY COUNTY, PENNSYLVANIA

LOWE, J., October 4, 1968

The defendant was tried before a jury and the undersigned, and on April 9, 1968 was found guilty of robbery, aggravated robbery, and assault and battery. Motions for a New Trial and in Arrest of Judgment were timely filed, have been argued, and are now ripe for determination.

The initial error urged upon the Court concerns the admission into evidence of certain utterances made by the defendant to Detective William A. McNabb. These were made just forty-five minutes following the incident giving rise to this criminal prosecution, and at a time when law enforcement officials were marshalling investigative procedures. The defendant, in the company of his wife, voluntarily and without solicitation appeared at police headquarters, voiced a desire to speak to a detective, and thereupon unburdened himself to Detective McNabb. It is to be observed the defendant's exculpatory dialogue with the detective was spontaneously uttered at *his* instance and at a time when he was not a suspect.

Miranda v. Arizona, 384 U.S. 436, (1966), provides the basic criteria by which state and federal courts must adjudicate the admissibility of pretrial statements made by a criminal defendant in the absence of counsel. Essential to a comprehension of this landmark, sixty-page opinion of the Chief Justice of the United States is an understanding of *custodial interrogation*. At page 444 we read:

> "Our holding will be spelled out with some specificity in the pages which follow but briefly stated it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial

interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."

In *Miranda*, the Chief Justice emphasizes time and again the mischiefs of custodial interrogation. With equal persuasion, he recites the circumstances and conditions under which the strictures of that opinion would have no application. For example, he observes at page 477,

> "The principles announced today deal with the protection which must be given to the privilege against self-incrimination when the individual is first subjected to police interrogation while in custody at the station or otherwise deprived of his freedom of action in any way. . . . Our decision is not intended to hamper the traditional function of police officers in investigating crime. . . . General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding."

Then again and more significantly, the opinion declares at page 478,

> "In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. . . . There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today."

Two years previous to the *Miranda* decision, the highest tribunal of the land, in considering the privilege against self-incrimination, succinctly observed this privilege permits a defendant "'. . . to remain silent unless he chooses to speak in the unfettered exercise of his own will, . . .' *Malloy v. Hogan*, 378 U.S. 1, 8 (1964).

In *Commonwealth v. Eperjesi*, 423 Pa. 455 (1966), the Supreme Court of Pennsylvania considered a murder prosecution wherein the defendant voluntarily approached a police officer and told him that she had closed the refrigerator door whereby the children were suffocated. A petition to suppress this statement was duly filed and the lower court decided affirmatively. On appeal, the Supreme Court of this Commonwealth speaking through Mr. Justice Musmanno declared that the defendant made the incriminating statement voluntarily and at a time when she was not under police investigation or even a suspect, and that, therefore, the lower court erred in suppressing the statement.

A second case considered by the Supreme Court of Pennsylvania relevant to the critical issue under discussion is *Commonwealth v. Lopinson*, 427 Pa. 284 (1967). In that case, a police officer responding to a radio message went to Dante's Restaurant and there found the defendant, Lopinson, sitting in a chair behind a desk in a basement office. The officer engaged in a conversation with the defendant and subsequently testified to it. The application of *Miranda* to this factual situation was raised in the lower court and on appeal. Mr. Justice Eagen, in speaking for the Court, observed at page 299:

> "Apart from the fact that the instant trial took place before the effective date of *Miranda v. Arizona*, 384 U.S. 436 (1966), the situation involved was not such as required the police officer to stop and warn Lopinson of his constitutional rights. As of the time involved Lopinson was not in custody, or even a suspect. Further, the officer was merely engaged in a general investigation and an 'on the scene' questioning as to

what happened. His testimony as to Lopinson's statements under these circumstances, even in the absence of a warning of constitutional rights, was clearly admissible."

The two decisions of the Supreme Court of Pennsylvania clearly support the unequivocal language of the Supreme Court of the United States in *Miranda*, and it is this Court's firm conviction that the principles and distinctions enunciated therein apply with equal vigor to the instant proceeding. The admitted and unquestioned circumstances attendant to the defendant's statements exclude custodial interrogation and the utterances were "the unfettered exercise of his own will." The statements of the defendant Whiting made to Detective McNabb were clearly admissible.

The second assigned error concerns identification of this defendant by the victim, Mrs. Mary Donnelly. After Mrs. Donnelly was treated at the Lankenau Hospital, she was taken to the Lower Merion Township Police headquarters. She arrived there one and one-half hours after the criminal assault, and three-quarters of an hour following the voluntary appearance of the defendant. Investigating police showed Mrs. Donnelly a series of eight photographs including one of the defendant pictured with eyeglasses. She identified the defendant as her assailant. Mrs. Donnelly was then shown a second series of photographs including one of the defendant pictured without eyeglasses. Again, she identified the defendant as her assailant. Critical to an appraisal of these identifications is the fact that at the time they were made Mrs. Donnelly was unaware of the defendant's earlier appearance at police headquarters and his subsequent arrest. Nothing was said to Mrs. Donnelly to aid or abet her identification.

The next day Mrs. Donnelly was summoned to the Lower Merion Township Police headquarters to make an in-person identification. She viewed the defendant through

a one-way mirror and thereupon again identified him as her assailant. On April 5, 1968 Mrs. Donnelly made an in-court identification of the defendant as her assailant.

Defendant's brief cites *U.S. v. Wade*, 388 U.S. 218 (1967) as sufficient authority to vitiate the identification and necessitate a new trial.

The *Wade* case is but one of three decisions of the Supreme Court of the United States decided the same day and touching upon pre-trial identifications. The other two are *Gilbert v. California*, 388 U.S. 263 (1967), and *Stovall v. Denno*, 388 U.S. 293 (1967). Examination of these three decisions readily reveals substantial distinguishing criteria from the instant prosecution. In *Wade*, the line-up was conducted following indictment and after the appointment of, but without notice to, counsel. The post-indictment line-up was held to be a critical stage of the prosecution at which Wade was entitled to the assistance of counsel. In *Gilbert* too the line-up was conducted after indictment and the appointment of counsel. It was held the in-court identification may have been tainted by the improper line-up procedure, and the case was remanded to the Supreme Court of California. In *Stovall*, the defendant, alone, handcuffed to a police officer, and the only Negro present, was ushered into a hospital room and identified less than twenty-four hours following the crimes and before counsel had been retained. In *obiter dicta* it was suggested lone or single identification, as opposed to a line-up, are to be condemned, but that they might be sustained nevertheless depending upon a totality of the circumstances.

Considering the photographic identifications of the previous evening it was entirely reasonable to confirm and authenticate the identity of the assailant the next day by means of an in-person view. This second identification procedure was merely corroborative of the first, and represents sound and reasonable police procedure. This Court finds as a fact that Mrs. Donnelly's in-court identification was not tainted by the identification of November 10, 1967 and that it was reasonable under the circumstances.

As was observed in *Commonwealth v. Bumpus*, Mass. 238 N.E. 2d 343 (1968), at page 357,

> "Reasonable confrontations of this type, in the course of (or immediately following) a criminal episode, seem to us to be wholly different from post-indictment confrontations (such as those in the *Wade* and *Gilbert* cases), in serious crimes after a significant interval of time, and in the absence of already appointed counsel. The Supreme Court of the United States has not applied the principle of the *Wade* and *Gilbert* cases in such circumstances. Until we have more guidance than at present about the scope of necessary application of these cases, we shall regard them as not intended to apply to facts like those in the case at bar. This is an area where proper police protection of the public may be greatly embarrassed by rigid rules restricting intelligent, fair police action. Such action must be appraised with common-sense appreciation of the problems which confront policemen patrolling a residential area."

Finally, in considering this attack upon the efficacy of the conviction, it is to be observed the defendant offered no objection at trial to any of the testimony, concerning identification. Failure to enter timely objection to incompetent or irrelevant evidence precludes later complaint. "A party may not sit by silent, take his chances on a verdict, and, if it is adverse, then complain of matter which, if error, could have been eradicated during the trial if brought to the court's attention properly and timely." *Bell v. Yellow Cab Co.*, 339 Pa. 332, 338-339 (1960), 88 C.J.S., Trial Sec. 33; *Wigmore on Evidence*, 3rd Ed., Section 18; *Commonwealth v. Razmus*, 210 Pa. 609 (1905).

The third and last contention advanced on behalf of the defendant in support of the post-trial motions concerns the denial of a motion for a change of venue. In support of this motion, and previous to swearing the jury, the court

took testimony in support thereof. The defendant's sister testified to a television newscast at the time of the offense which mentioned her brother's name and the fact he had been recently released after serving time for a prior offense. She also authenticated a newspaper account which appeared in the *Main Line Chronicle* on November 16, 1967. The defendant testified to an account which allegedly appeared in the *Philadelphia Evening Bulletin* in November, 1967, and which recited the defendant's prior murder conviction and subsequent release.

The jury which tried this case was selected in the Orphans' Court Room at the Court House. Each juror was individually selected in accordance with law, subjected to a *voir dire* examination, and if approved, was sequestered in a jury retiring room to await trial. Not one of the jurors called had ever heard of the defendant or had any knowledge that would or could, even remotely, prejudice a fair and impartial verdict. The attorney for the Commonwealth and defense counsel each exercised only one peremptory challenge, and neither advanced a challenge for cause.

A criminal defendant is constitutionally entitled to be tried by a tribunal free of prejudicial passion and bias. *Sheppard v. Maxwell*, 384 U.S. 333 (1966). It is clear beyond question the jury's conclusion must be motivated and induced only by evidence and argument elicited in open court. *Patterson v. Colorado*, 205 U.S. 454 (1907). "The fact that petitioner did not challenge for cause any of the jurors so selected is strong evidence that he was convinced the jurors were not biased and had not formed any opinions as to his guilt." *Beck v. Washington*, 369 U.S. 541, 557-558 (1962).

"Not one of the jurors selected was challenged for cause and there is nothing in the record to indicate that any such cause did exist. Under such circumstances, it is our view that a fair and impartial jury tried the case and we certainly do not feel compelled to find, as a matter of law, that bias or preformed opinion invaded the jury box and influenced the verdict. The contention that an unfair

trial resulted on this basis is bottomed on pure speculation. One who claims such an injustice must rely on more than mere guess." *Commonwealth v. Lopinson*, *supra*, at page 295.

There was a paucity of publicity attendant to the defendant's arrest and his previous incursions with the criminal law. Such as there was preceded the trial by nearly five months. There were no distinguishing characteristics or peculiarities relative to the identity of the victim or the defendant meriting fame or notoriety. Accordingly, this Court is satisfied there is absolutely no merit to the defendant's contention in this regard and his motion for change in venue.

Other issues advanced by the defendant concerning the credibility of the identification testimony, and the weight of the evidence are frivolous. They find no support in law or in the facts of this case. The verdicts were more than justified by the evidence and testimony.

ORDER

AND NOW, this 4th day of October, A.D. 1968, the defendant's Motions for a New Trial and in Arrest of Judgment are hereby dismissed and the prayer for relief is denied. The defendant is directed to appear before this Court on Friday, October 11, 1968, at 9:00 A.M., for the purpose of having sentence imposed.

BY THE COURT:

/s/ RICHARD S. LOWE, J.